

# EXHIBIT 2



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State of California, ex rel. Edwin F. Lowry,  
Director, Department of Toxic Substances Control  
8

**FILED**  
ALAMEDA COUNTY

NOV 13 2002

CLERK OF THE SUPERIOR COURT  
By Shefa DEPUTY

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ALAMEDA  
11

12 PEOPLE OF THE STATE OF CALIFORNIA, ex rel.  
Edwin F. Lowry, Director, Department of Toxic  
13 Substances Control,

14 Plaintiffs,

15 v.

16 TECHNICHEM, INC., a California Corporation;  
MARK J. NG, an individual,  
17

18 Defendants.  
19  
20

Case No.: 826946-1

**NOTICE OF MOTION TO  
ENFORCE PARTIAL CONSENT  
DECREE AND SEEK  
PENALTIES**

Date: December 20, 2002  
Time: 9:00 am  
Dept: 31

Action Date: June 2, 2000

21 TO: TECHNICHEM, INC., a California Corporation, and its attorney of record, Star Lightner:

22 NOTICE IS HEREBY GIVEN that a Motion to Enforce Partial Consent Decree and Seek  
23 Penalties has been set for hearing on December 20, 2002, at 9:00 a.m., or as soon thereafter as

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ORIGINAL

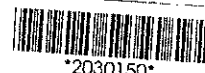
1 the matter can be heard, in the courtroom of Department 31 of the above-entitled court located at  
2 1225 Fallon Street, Oakland, California.

3 Respectfully submitted,  
4 BILL LOCKYER, Attorney General  
5 of the State of California  
6 THEODORA BERGER  
7 Assistant Attorney General

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Dated: 11/8/02

By: 

G. LYNN THORPE  
Deputy Attorney General  
Attorneys for Plaintiff



**FILED**  
ALAMEDA COUNTY

NOV 13 2002

CLERK OF THE SUPERIOR COURT  
By Shipa DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA, ex rel.  
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Substances Control,

Plaintiffs,

v.

TECHNICHEM, INC., a California Corporation;  
MARK J. NG, an individual,

Defendants.

Case No.: 826946-1

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION TO  
ENFORCE PARTIAL CONSENT  
DECREE AND SEEK  
PENALTIES**

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ORIGINAL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT MOTION TO ENFORCE PARTIAL  
CONSENT DECREE AND SEEK PENALTIES  
FILED 10-0000010

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California Code of Regulations, title 22, section 66271.15

4

California Code of Regulations, title 22, section 66271.15(a)(2)

5

Partial Consent Decree (June 28, 2000)

*passim*

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10 FOR THE COUNTY OF ALAMEDA

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Date: December 20, 2002  
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 Dept.: 31

Action Date: June 2, 2000

19  
 20  
 21 Plaintiff People of the State of California, ex rel. Edwin R. Lowry, Director, Department  
 22 of Toxic Substances Control (hereinafter DTSC) submit the following memorandum of points  
 23 and authorities in support of the motion to enforce provisions of the Partial Consent and Order  
 24 for Injunctive Relief (Partial Consent Decree) against Technichem, Inc., (Technichem) in this  
 25 matter. Further, DTSC seeks penalties as stipulated in the Partial Consent Decree, in the amount  
 26 of \$1,440,000.

27 ///

28 ///

1.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT MOTION TO ENFORCE PARTIAL  
 CONSENT DECREE AND SEEK PENALTIES

PELL ID 0000015

## I.

ISSUE

Technichem is required to comply with its hazardous waste permit and additional requirements as specified in the Partial Consent Decree. (Partial Consent Decree ¶5.) Violations of the Partial Consent Decree carry stipulated penalties of \$10,000 per violation, per day. (Partial Consent Decree ¶9.) Technichem has repeatedly violated the Partial Consent Decree, discussed below, including exceeding its monthly limit of hazardous waste, aisle space, failure to label incoming waste and illegal storage of hazardous waste. The question is whether these stipulated penalties can be imposed. DTSC believes that the stipulated penalties can and should be imposed for the reasons set forth below.

## II.

BACKGROUND

The court signed the Partial Consent Decree on June 28, 2000. The Partial Consent Decree anticipates that Technichem would obtain a DTSC approved final hazardous waste facility permit to replace its existing permit. (Partial Consent Decree ¶5.) Until such time as Technichem obtains a new DTSC approved hazardous waste permit, in this case a Standardized Permit, Technichem is required to comply with paragraphs 7 and 8 of the Partial Consent Decree. (Partial Consent Decree ¶5.) DTSC has not issued a Standardized Permit to Technichem. The court retains jurisdiction to enforce paragraphs 7, 8 and 9 until Technichem obtains its new permit. (Partial Consent Decree ¶5.) Technichem shall be liable for a stipulated penalty of \$10,000 per day for each violation of the Partial Consent Decree provisions. (Partial Consent Decree ¶9.)

On June 1, 2001, DTSC provided Notice of a Final Permit Decision to issue a Standardized Hazardous Waste Facility Permit to Technichem. (See Exhibit A, Notice of Final Permit Decision.) Technichem's Standardized Hazardous Waste Facility Permit was attached to the Notice of Final Permit Decision. (See Exhibit B, Standardized Hazardous Waste Facility Permit (Standardized Permit).) The Notice indicates the final Standardized Permit would become effective on July 9, 2001, subject to a 30 day administrative appeal period pursuant to



1 California Code of Regulations (Cal. Code Regs.), title 22, section 66271.18. (See Exhibit A,  
2 Notice of Final Permit Decision.)

3 On July 6, 2001, the City of Emeryville filed an appeal of the final permit decision. (See  
4 Exhibit C, City of Emeryville's Appeal of Final Permit Decision (Emeryville's Permit Appeal).)  
5 Technichem filed an appeal on July 9, 2001. (See Exhibit D, Technichem's Request for Review,  
6 Permit Decision (Technichem's Permit Appeal).)

7 On August 2, 2001, DTSC acknowledged receipt of the appeals by the City of Emeryville  
8 and Technichem. (See Exhibit E, Acknowledgment of Receipt of Request for Review, Final  
9 Permit Decision; Notice of Ineffectiveness/Stay of Permit to the City of Emeryville (Emeryville's  
10 Permit Appeal Acknowledgment); and Exhibit F, Acknowledgment of Receipt of Request for  
11 Review, Final Permit Decision; Notice of Ineffectiveness/Stay of Permit to Technichem  
12 (Technichem's Permit Appeal Acknowledgment).) Emeryville's Permit Appeal  
13 Acknowledgment mentioned and attached Technichem's Permit Appeal. (See Exhibit E,  
14 Emeryville's Permit Appeal Acknowledgment, p. 2, ¶1.) Similarly, Technichem's Permit Appeal  
15 Acknowledgment mentioned and attached Emeryville's Permit Appeal Acknowledgment. (See  
16 Exhibit F, Technichem's Permit Appeal Acknowledgment, p. 2, ¶1.)

17 Technichem is required to operate pursuant to the provisions of the Partial Consent  
18 Decree since the permit appeal has not been resolved by DTSC. However, Technichem claims  
19 that the Partial Consent Decree is no longer effective and that it may, instead, operate under the  
20 stayed permit.

### 21 III.

#### 22 ARGUMENT

##### 23 A. **Technichem's Standardized Permit Never Became Final**

24 Technichem claims it has been issued a Standardized Permit and thus, the court has lost  
25 its jurisdiction to enforce the hazardous waste requirements of the Partial Consent Decree.  
26 However, as discussed below, there is no factual or legal support for Technichem's assertion.  
27 Technichem's Standardized Permit never became effective and therefore the court never lost its  
28 jurisdiction to hold Technichem accountable for violations of the Partial Consent Decree.

On August 2, 2001, DTSC's Dorothy Rice notified both the City of Emeryville and Technichem that the "contested permit is ineffective pending request for review and stayed pending any grant of review." (See Exhibit E, Emeryville's Permit Appeal Acknowledgment, p. 2, and Exhibit F, Technichem Permit Appeal Acknowledgment, p. 2.) Ms. Rice's letter references Cal. Code Regs., title 22, section 66271.14(b)(2) which states:

(b) A final permit decision . . . shall become effective 30 days after the service of notice of the decision unless:

(2) review is requested under section 66271.18[.]"

As mentioned above, both the City of Emeryville and Technichem appealed DTSC's permit decision. (See Exhibit C, Emeryville's Permit Appeal, and Exhibit D, Technichem's Permit Appeal.) Consequently, the permit did not become final and effective pursuant to Cal. Code Regs., title 22, section 66271.15. Since Technichem has not secured a final hazardous waste permit, the court retains its jurisdiction to enforce the provisions of the Partial Consent Decree. (Partial Consent Decree, ¶5.)

**B. Technichem May Not Operate Under the Appealed Standardized Permit**

Technichem claims that, even if its Standardized Permit is not final, it may still operate under those provisions in the Standardized Permit that were not appealed. DTSC assumes that Technichem's position is that these unappealed provisions of the Standardized Permit somehow modify the Partial Consent Decree requirement for Technichem to obtain from DTSC an approved final hazardous waste permit. (Partial Consent Decree, ¶5.) Assuming, for the sake of discussion, that the Partial Consent Decree could be modified by Standardized Permit provisions that have not been appealed, Technichem's argument still fails.

**1. DTSC Stayed the Entire Permit Pending Resolution of Any Grant of Review**

As discussed above, both the City of Emeryville and Technichem were informed by DTSC that the entire permit was stayed pending a grant of review. (See Exhibit E, Emeryville's Permit Appeal Acknowledgment, p. 2, and Exhibit F, Technichem Permit Appeal Acknowledgment, p. 2.) DTSC has not granted the request for review. (See Declaration of Dorothy Rice.) Ms. Rice's letters are not grants for request of review. (See Exhibit E,

1 Emeryville's Permit Appeal Acknowledgment, p. 2, and Exhibit F, Technichem Permit Appeal  
2 Acknowledgment, p. 2.)

3       However, to the extent that it is contended that Ms. Rice's letters are grants of request of  
4 review of the permit, then the provisions of Cal. Code Regs., title 22, section 66271.15(a)(2) are  
5 instructive. This section states, in part, "Stayed provisions of permits for existing facilities shall  
6 be identified by the Department." Here, as mentioned above, the "contested permit is ineffective  
7 pending request for review and stayed pending any grant of review." (See Exhibit E,  
8 Emeryville's Permit Appeal Acknowledgment, p. 2, and Exhibit F, Technichem Permit Appeal  
9 Acknowledgment, p. 2.) Consequently, there are no unstayed provisions of the permit under  
10 which Technichem may operate.

## 11       **2. All Provisions of Standardized Permit Were Appealed**

12       Technichem cannot point to a single permit condition that has not been appealed by either  
13 the City of Emeryville or by Technichem. The City of Emeryville's Permit Appeal states:

14               However, a facility like Technichem can only work here [in Emeryville] if  
15 it is appropriately located given surrounding land uses; if it operates  
16 properly and in conformance with applicable laws; and if its impacts have been  
17 adequately reviewed. At this point, we do not believe this is the case with  
18 Technichem and strongly urge you [DTSC] to reconsider the issuance of a  
19 Final Permit to Technichem at this time.

20 (See Exhibit C, Emeryville's Permit Appeal, p. 1, third paragraph.) Clearly, Emeryville has  
21 appealed Technichem's entire permit.

22       Technichem also appealed virtually all provisions of the Standardized Permit. (See  
23 Exhibit D, Technichem's Permit Appeal.) In its Permit Appeal cover letter, Technichem objects  
24 to the "over sixty (60) separate 'special conditions' that make facility operation nearly an  
25 impossible act." (See Exhibit D, Technichem's Permit Appeal, cover letter, pp. 1-2.)

26       The Standardized Permit contains sixty-four special conditions that include: acceptance,  
27 treatment or storage limits of 2,000 gallons of hazardous waste per month (Exhibit B,  
28 Standardized Permit, Special Conditions 2, 3 and 59, pp. 16 and 27); aisle space (Exhibit B,  
Standardized Permit, Special Condition 28, p. 20); labeling requirements (Exhibit B,  
Standardized Permit, Special Conditions 4, 5 and 6, pp. 16-17); and storage (See Exhibit B,

1 Standardized Permit, Special Conditions 22, 33, 46, and 47).

2 Technichem appealed most of the Standardized Permit conditions including the  
3 following: acceptance, treatment or storage limits of 2,000 gallons of hazardous waste until  
4 Technichem has secured a modification of its existing Conditional Use Permit from the City of  
5 Emeryville (See Exhibit D, Technichem's Permit Appeal, p.14, ¶30); aisle space (Exhibit D,  
6 Technichem's Permit Appeal, p.8, ¶17); labeling requirements (Exhibit D, Technichem's Permit  
7 Appeal, pp. 4-5, ¶¶7-8); and storage and vehicle parking (Exhibit D, Technichem's Permit  
8 Appeal, pp.3-4, ¶¶6(1)-6(2)). The City of Emeryville has not granted Technichem a modification  
9 of its Conditional Use Permit. (See Exhibit C, Emeryville's Permit Appeal, pp. 5-7.)

### 10 **3. All Provisions that DTSC Seeks to Enforce Were Appealed**

11 DTSC seeks to enforce those provisions of the Partial Consent Decree that regulated  
12 Technichem's acceptance, treatment or storage limit, aisle space requirements, labeling  
13 requirements and storage and parking requirements. (See section IV below.) As discussed  
14 above, Technichem appealed the Standardized Permit provisions that address these issues.

## 15 **IV.**

### 16 **VIOLATIONS OF THE PARTIAL CONSENT DECREE**

17 Technichem has committed extensive violations of the Partial Consent Decree. These  
18 violations, as outlined below, stretch over several years.

#### 19 **A. Monthly Acceptance, Storage or Treatment Limits Violations**

20 The Partial Consent Decree provides that "Technichem shall only accept, store or treat  
21 7,000 gallons total of hazardous waste or 2,000 gallons of perc (determined as a percentage of  
22 hazardous waste accepted at the facility), whichever is less, in any calendar month." (Partial  
23 Consent Decree, ¶7(B)(2).) Any wastewater that Technichem accepts shall be included in its  
24 7,000 gallon input limitation. (Partial Consent Decree, ¶7(A)(6)(b).) Technichem is required to  
25 maintain daily logs stating the quantity of hazardous waste accepted. (Partial Consent Decree,  
26 ¶7(B)(2).)

27 On June 13, 2002, Technichem, in response to a request by DTSC, submitted a Monthly  
28 Incoming Waste Log for July 2001 through May 2002. (See Exhibit G, Technichem's Monthly

1 Incoming Waste Volume Logs (Monthly Logs.)<sup>1/</sup> These logs evidence that Technichem was in  
 2 violation of its acceptance, storage or treatment limits for 138 days. Consequently, DTSC is  
 3 entitled to penalties of \$1,380,000 pursuant to the Partial Consent Decree.

4 The calculations set forth below are based upon the figures set forth in Exhibit G,  
 5 Technichem's Monthly Logs for any given month. For the convenience of the reader, an Excel  
 6 document has been generated for the months in question that has a running total of gallons in the  
 7 left hand column. (See Exhibit H, Excel calculations.) Further, the Excel calculations are based  
 8 only upon the first two columns of Exhibit I for a given month. The first column for any given  
 9 month on Exhibits G and H denote distillation bottoms and the second column denotes  
 10 wastewater contaminated with perc. (See Partial Consent Decree ¶¶7(A)(6)(b) and 7(B)(2).)  
 11 Lastly, the calculations are based upon the assumption that Technichem had treated all the waste  
 12 from the previous month and could accept its full 7,000 gallon limit for any given month.

13 1. May 2002

14 Technichem's Incoming Waste Volume Log indicates that it received over 11,000 gallons  
 15 of hazardous waste in May 2002. (See Exhibit G, pp. 23 -24; and Exhibit H, pp 23-24.)  
 16 Technichem exceeded its monthly acceptance limit on May 18, 2002. (See Exhibit G, p. 23 and  
 17 Exhibit H, p. 24.) In May 2002, Technichem was in violation of the Partial Consent Decree,  
 18 paragraph 7(B)(2), for 14 days.

19 2. April 2002

20 Technichem's Incoming Waste Volume Log indicates that it received over 9,500 gallons  
 21 of hazardous waste in April 2002. (See Exhibit G, pp. 21-22; and Exhibit H, pp. 21-22.)  
 22 Technichem exceeded its monthly acceptance limit on April 20, 2002. (See Exhibit G, p. 21; and  
 23 Exhibit H, p. 21.) In April 2002, Technichem was in violation of the Partial Consent Decree,  
 24 paragraph 7(B)(2), for 11 days,

25 3. March 2002

26 Technichem's Incoming Waste Volume Log indicates that it received over 12,000 gallons

27  
 28 1. The original of Exhibit G, Technichem's Monthly Logs are not consecutively  
 paginated. Page numbers have been added for the ease of referencing a given log.

1 of hazardous waste in March 2002. (See Exhibit G, pp. 19-20; and Exhibit H, pp. 19-20.)  
2 Technichem exceeded its monthly acceptance limit on March 16, 2002. (See Exhibit G, p. 20;  
3 and Exhibit H, p. 20.) In March 2002, Technichem was in violation of the Partial Consent  
4 Decree, paragraph 7(B)(2), for 16 days.

5 4. February 2002

6 Technichem's Incoming Waste Volume Log indicates that it received over 12,000 gallons  
7 of hazardous waste in February 2002. (See Exhibit G, pp. 17-18; and Exhibit H, pp. 17-18.)  
8 Technichem exceeded its monthly acceptance limit on February 16, 2002. (See Exhibit G, p. 17;  
9 and Exhibit H, p. 17.) In February 2002, Technichem was in violation of the Partial Consent  
10 Decree, paragraph 7(B)(2), for 13 days.

11 5. January 2002

12 Technichem's Incoming Waste Volume Log indicates that it received over 9,700 gallons  
13 of hazardous waste in January 2002. (See Exhibit G, pp. 15-16; and Exhibit H, pp. 15-16.)  
14 Technichem exceeded its monthly acceptance limit on or before January 24, 2002. (See Exhibit  
15 G, p. 16; and Exhibit H, p. 16.) In January 2002, Technichem was in violation of the Partial  
16 Consent Decree, paragraph 7(B)(2), for eight days.

17 6. December 2001

18 Technichem's Incoming Waste Volume Log indicates that it received over 11,000 gallons  
19 of hazardous waste in December 2001. (See Exhibit G, pp. 13-14; and Exhibit H, pp. 12-14.)  
20 Technichem exceeded its monthly acceptance limit on December 15, 2001. (See Exhibit G, p.  
21 14; and Exhibit H, p. 13.) In December 2001, Technichem was in violation of the Partial  
22 Consent Decree, paragraph 7(B)(2), for 17 days.

23 7. November 2001

24 Technichem's Incoming Waste Volume Log indicates that it received over 9,000 gallons  
25 of hazardous waste in November 2001. (See Exhibit G, pp. 11-12; and Exhibit H, pp. 10-11.)  
26 Technichem exceeded its monthly acceptance limit on November 20, 2001. (See Exhibit G, p.  
27 12; and Exhibit H, p. 11.) In November 2001, Technichem was in violation of the Partial  
28 Consent Decree, ¶7(B)(2), for 11 days.



1           8. October 2001

2           Technichem's Incoming Waste Volume Log indicates that it received over 9,000 gallons  
3 of hazardous waste in October 2001. (See Exhibit G, pp. 9-10; and Exhibit H, pp. 8-9.)  
4 Technichem exceeded its monthly acceptance limit on October 20, 2001. (See Exhibit G, p. 10;  
5 and Exhibit H, p. 9.) In October 2001, Technichem was in violation of the Partial Consent  
6 Decree, paragraph 7(B)(2), for 12 days.

7           9. September 2001

8           Technichem's Incoming Waste Volume Log indicates that it received over 11,000 gallons  
9 of hazardous waste in September 2001. (See Exhibit G, pp. 7-8; and Exhibit H, pp. 6-7.)  
10 Technichem exceeded its monthly acceptance limit on September 20, 2001. (See Exhibit G, p. 8;  
11 and Exhibit H, p. 7.) In September 2001, Technichem was in violation of the Partial Consent  
12 Decree, paragraph 7(B)(2), for 11 days.

13          10. August 2001

14          Technichem's Incoming Waste Volume Log indicates that it received over 12,000 gallons  
15 of hazardous waste in August 2001. (See Exhibit G, pp. 4-6; and Exhibit H, pp. 3-5.)  
16 Technichem exceeded its monthly acceptance limit on August 18, 2001. (See Exhibit G, p. 5;  
17 and Exhibit H, p. 4.) In August 2001, Technichem was in violation of the Partial Consent  
18 Decree, paragraph 7(B)(2), for 14 days.

19          11. July 2001

20          Technichem's Incoming Waste Volume Log indicates that it received over 10,500 gallons  
21 of hazardous waste in July 2001. (See Exhibit G, pp. 2-3; and Exhibit H, p. 1-2.) Technichem  
22 exceeded its monthly acceptance limit on July 21, 2001. (See Exhibit G, p. 2 and Exhibit H, p.  
23 1.) Technichem was in violation of the Partial Consent Decree, paragraph 7(B)(2), for 11 days.

24       **B. Aisle Space Violation**

25          The Partial Consent Decree provides that "Technichem shall maintain aisle space in  
26 Areas 1 and 4 of at least thirty inches to allow unobstructed movement of personnel, fire  
27 protection equipment, spill control equipment and decontamination equipment to any of the  
28 facility operation in case of an emergency." (See Partial Consent Decree, ¶7(C), 7:4-8.)

1 On June 12, 2002, DTSC inspected Technichem's facility. Technichem was not  
 2 maintaining thirty inches of aisle space within Area 1. DTSC inspectors found that the aisle  
 3 space in this area varied from twenty-six inches to as little as three inches in some places. (See  
 4 Declaration of Luz Castillo ("Castillo Decl."), ¶2.) Technichem was in violation of Partial  
 5 Consent Decree, paragraph 7(C), for one day and liable for a \$10,000 stipulated penalty.

6 **C. Failure to Label Incoming Waste**

7 The Partial Consent Decree provides that "Technichem shall make and label all incoming  
 8 DOT-approved containers of perchloroethylene ("perc")-containing hazardous waste that are  
 9 received from offsite generators and containers of newly generated sludge with different colored,  
 10 large-sized placards or tags." (See Partial Consent Decree, ¶7(A)(2), 3:15-17.) The Partial  
 11 Consent Decree further requires placards or tags to contain: internal drum or container number;  
 12 the type of generator; and manifest number, date and exact time to the nearest minute of waste  
 13 acceptance. (See Partial Consent Decree ¶7(A)(2).)

14 On June 12, 2002, DTSC inspected Technichem and found four containers that were  
 15 unlabeled. (See Castillo Decl. ¶3.) While labels were located near these containers, they did not  
 16 bear all of the required information. (See Castillo Decl. ¶3.) Technichem was in violation of  
 17 Partial Consent Decree, ¶7(A)(2), for one day and liable for a \$10,000 stipulated penalty.

18 **D. Hazardous Waste Storage in Unauthorized Areas**

19 The Partial Consent Decree provides "Technichem shall not transfer, store, treat, or  
 20 process any hazardous waste in any area other than the liquid/solid strainer, which must be  
 21 located in Area 4, or those areas identified on the map on Attachment A to this Consent  
 22 Decree[.]" (See Partial Consent Decree paragraph 7(A)(1).)

23 On October 24, 2000, DTSC found that Technichem had two vehicles parked outside its  
 24 facility on Halleck Street. One tractor trailer (license plate YC7994) held 64 containers of  
 25 hazardous waste. (See Castillo Decl. ¶6.) The other truck (license plate D5G41515) held 36  
 26 containers of hazardous waste. (See Castillo Decl. ¶6.)

27 On October 27, 2000, DTSC found that truck (license plate D5G41515) still parked on  
 28 Halleck Street. It still contained 36 hazardous waste drums. (See Castillo Decl. ¶8.) Truck



(license plate YC7994) was no longer parked on Halleck Street. (See Castillo Decl. ¶8.)  
 However, another Technichem truck (license plate 3Z90216) was now parked on Halleck Street.  
 (See Castillo Decl. ¶8.) This truck held 35 containers of hazardous waste. (See Castillo Decl.  
 ¶8.)

Halleck Street is not identified as an area that hazardous waste may be stored by the  
 Partial Consent Decree. Technichem was in violation of Partial Consent Decree, paragraph  
 7(A)(1), for four days and liable for a \$40,000 stipulated penalty.

V.

### CONCLUSION

The violations documented above clearly run afoul of the Partial Consent Decree's  
 provisions. Here, Technichem unilaterally decided that it could operate under the Standardized  
 Permit, even though it appealed the Standardized Permit and was notified that the permit was  
 stayed pending the resolution of Technichem's and the City of Emeryville's permit appeals.

DTSC respectfully requests that the court find Technichem in violation of all the  
 foregoing provisions of the Partial Consent Decree and impose a stipulated penalty of  
 \$1,440,000.

Respectfully submitted,

BILL LOCKYER, Attorney General  
 of the State of California  
 THEODORA BERGER  
 Assistant Attorney General

Dated: 11/8/07

By: 

G. LYNN THORPE  
 Deputy Attorney General  
 Attorneys for Plaintiff



1 BILL LOCKYER, Attorney General  
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**FILED**  
 ALAMEDA COUNTY

NOV 13 2002

CLERK OF THE SUPERIOR COURT  
 By Sheja DEPUTY

6 Attorneys for Plaintiffs People of the  
 7 State of California, ex rel. Edwin F. Lowry,  
 Director, Department of Toxic Substances Control

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF ALAMEDA

12 PEOPLE OF THE STATE OF CALIFORNIA, ex rel.  
 Edwin F. Lowry, Director, Department of Toxic  
 13 Substances Control,

14 Plaintiffs,

15 v.

16 TECHNICHEM, INC., a California Corporation;  
 17 MARK J. NG, an individual,

18 Defendants.

Case No.: 826946-1

**DECLARATION OF DOROTHY  
 RICE IN SUPPORT OF MOTION  
 TO ENFORCE PARTIAL  
 CONSENT DECREE AND SEEK  
 PENALTIES**

Date: December 20, 2002  
 Time: 9:00 am  
 Dept: 31

Action Date: June 2, 2000

21 I, Dorothy Rice, declare:

22 1. I am employed by the Department of Toxic Substances Control (DTSC) as a Deputy  
 23 Director for the Site Mitigation Program.

24 2. I have been appointed to review Technichem's and the City of Emeryville's Appeal of  
 25 Final Permit Decision re Technichem, Incorporated.

26 3. To date, the Department of Toxic Substances Control has not issued an order granting  
 27 or denying Technichem's or the City of Emeryville's appeals.

28 4. Technichem's Standardized Permit cannot become final prior to the resolution of these

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1 appeals pursuant to California Code of Regulations, title 22, section 66271.18.

2 I declare under penalty of perjury that the foregoing is true and correct and that this  
3 declaration is executed in Sacramento, California, on November 7, 2002.

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5 DOROTHY RICE  
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\*2030142\*

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9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 FOR THE COUNTY OF ALAMEDA  
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12 PEOPLE OF THE STATE OF CALIFORNIA, ex rel.  
 Edwin F. Lowry, Director, Department of Toxic  
 13 Substances Control,

Plaintiffs,

v.

16 TECHNICHEM, INC., a California Corporation;  
 17 MARK J. NG, an individual,

Defendants.

Case No.: 826946-1

**DECLARATION OF LUZ  
 CASTILLO IN SUPPORT OF  
 MOTION TO ENFORCE  
 PARTIAL CONSENT DECREE  
 AND SEEK PENALTIES**

Date: December 20, 2002  
 Time: 9:00 am  
 Dept: 31

Action Date: June 2, 2000

19  
 20 I, Luz Castillo, declare:

21 1. I am employed by the Department of Toxic Substances Control (DTSC) as a Senior  
 22 Hazardous Substances Scientist.

23 2. I, along with Essam Eissa, inspected Technichem on June 12, 2002. During that  
 24 inspection, I noted that Technichem did not maintain the thirty inch aisle space required by the  
 25 Partial Consent Decree. On the north wall of the hazardous waste drum storage area,  
 26 Technichem had aisle space ranging from two inches to twenty-six inches.

27 3. During my June 12, 2002, inspection, I noticed four barrels of hazardous waste in the  
 28 drum storage area that did not have hazardous waste labels as required by the Partial Consent

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1 Decree. There were labels on the wooden pallets upon which the drums were stored. These were  
2 blue labels that indicated the business that shipped the waste, the EPA identification number of  
3 each business and reference to a hazardous waste manifest number. Further, the information on  
4 the blue label failed to include an internal drum number and the type of generator.

5 4. Technichem admitted in its response to violations, issued after the June 12, 2002,  
6 inspection, that the labels on the pallets were affixed to drums after our inspection.

7 5. On October 24, 2000, I, along with Senior Hazardous Substances Scientist Doug  
8 Hohman, conducted an inspection of the Technichem, Incorporated (Technichem) facility located  
9 at 4245 Halleck Street, Emeryville, California to determine whether Technichem was in  
10 compliance with the Partial Consent Decree and Order in this case and its hazardous waste  
11 permit. I conducted a follow-up inspection on October 27, 2000.

12 6. On October 24, 2000, I noted a Technichem truck (license plate number DG41515)  
13 and a tractor-trailer (license plate number YC7994) parked outside the facility on Halleck Street.  
14 The truck contained 36 barrels of hazardous waste. The tractor-trailer contained 46 barrels of  
15 hazardous waste. Neither one of these vehicles contained hazardous waste manifests for the  
16 waste that they contained.

17 7. Ultimately, Mr. Tom Perry, Technichem Plant Manager, provided copies of the  
18 hazardous waste manifests for both the truck (license plate number DG41515) and the tractor-  
19 trailer (license plate number YC7994). The manifests had been stored in the facility. The  
20 manifests indicated that the hazardous waste was tetrachloroethylene. Tretrachloroethylene is the  
21 same chemical as perchloroethylene or "perc" referred to in the Partial Consent Decree and Order  
22 and Technichem's permit. The manifests had not been signed by Technichem as the receiving  
23 treatment and disposal facility.

24 8. During my October 27, 2000, follow-up inspection, I again noted Technichem truck  
25 (license plate number DG41515) parked on Halleck Street. This truck still contained 36 barrels  
26 of hazardous waste. The Technichem tractor-trailer (license plate number YC7994) was no  
27 longer parked on Halleck Street. Mr. Perry indicated that the tractor-trailer had gone to Southern  
28 California without unloading the 46 barrels of hazardous waste noted on October 24, 2000. A

1 second Technichem truck (license plate number 3Z90216) was parked on Halleck Street. This  
2 truck contained 35 barrels of hazardous waste. Both trucks had the appropriate hazardous waste  
3 manifests. However, the manifests had not been signed and dated by Technichem as the  
4 receiving facility.

5 9. During my October 27, 2000, follow-up inspection, Mr. Stephen Tung, Technichem's  
6 Chief Operating Officer, indicated that the hazardous waste noted in the two trucks and the  
7 tractor-trailer had not been unloaded because Technichem had accepted 6,950 gallons of  
8 hazardous waste for the month of October and could not accept anymore waste without  
9 exceeding the 7,000 gallon limit set forth in the Partial Consent and Order. Mr. Tung indicated  
10 that the waste would be moved into the facility on November 1, 2000.

11 I declare under penalty of perjury that the foregoing is true and correct and that this  
12 declaration is executed in Berkeley, California, on November 7, 2002.

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14 LUZ CASTILLO  
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\*2030134\*

BILL LOCKYER, Attorney General  
of the State of California  
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**FILED**  
ALAMEDA COUNTY

NOV 13 2002

CLERK OF THE SUPERIOR COURT

By Salpa DEPUTY

Attorneys for Plaintiffs People of the  
State of California, ex rel. Edwin F. Lowry,  
Director, Department of Toxic Substances Control

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA, ex rel.  
Edwin F. Lowry, Director, Department of Toxic  
Substances Control,

Case No.: 826946-1

Plaintiffs,

v.

**DECLARATION OF SERVICE**

Date: December 20, 2002

Time: 9:00 am

Dept: 31

TECHNICHEM, INC., a California Corporation;  
MARK J. NG, an individual,

Action Date: June 2, 2000

Defendants.

See attached.

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**DECLARATION OF SERVICE**

(AG Mailroom)

Case Name: **People v. Technichem, Inc., et al.**

No.: 826946-1

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 8, 2002, I served the attached:

- 1) **NOTICE OF MOTION TO ENFORCE PARTIAL CONSENT DECREE**
- 2) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO ENFORCE PARTIAL CONSENT DECREE**
- 3) **DECLARATION OF LUZ CASTILLO IN SUPPORT OF MOTION TO ENFORCE PARTIAL CONSENT DECREE**
- 4) **DECLARATION OF DOROTHY RICE IN SUPPORT OF MOTION TO ENFORCE PARTIAL CONSENT DECREE**
- 5) **DECLARATION OF SERVICE**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

**Star Lightner, Esq.**  
**Paul, Hastings, Janofsky & Walker**  
**324 California Street**  
**San Francisco, CA 94104-2635**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 8, 2002, at Sacramento, California.

C. DUNKLE

Typed Name



Signature